

RECORDATION NO. 24936 FILED

APR 30 '04 2:55 PM

SURFACE TRANSPORTATION BOARD

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ELIAS C. ALVORD (1942)
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OF COUNSEL
URBAN A. LESTER

April 30, 2004

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Memorandum of Mortgage, dated as of April 30, 2004, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Debtor: Babcock & Brown Rail Funding LLC
230 Park Avenue
New York, NY 10169

[Secured Party: Bayerische Hypo-Und Vereinsbank AG, Agent
FPA 4 Lease/Asset Finance
Am Tucherpark 1 (FPA)
80538 Munich
Germany]

Mr. Vernon A. Williams
April 30, 2004
Page Two

A description of the railroad equipment covered by the enclosed document
is:

451 gondola cars PSTX 1001 – PSTX 1451

A short summary of the document to appear in the index is:

Memorandum of Mortgage.

Also enclosed is a check in the amount of \$30.00 payable to the order of
the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the
undersigned.

Very truly yours,



Robert W. Alvord

RWA/anm
Enclosures

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EXECUTION COPY

SURFACE TRANSPORTATION BOARD

MEMORANDUM OF MORTGAGE

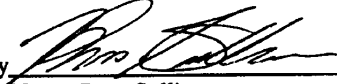
Memorandum of Mortgage, made and entered into as of April __, 2004 between BABCOCK & BROWN RAIL FUNDING LLC, (the "Debtor") and BAYERISCHE HYPO-UND VEREINSBANK AG, as Agent under the Security Agreement referred to below (together with its successors and permitted assigns, the "Secured Party"). Terms used in this instrument have the meanings assigned thereto in the Amended and Restated Security Agreement dated as of October 18, 2002 (as supplemented, including by Security Agreement Supplement No. 9 dated the date hereof, the "Security Agreement") between the Secured Party and the Debtor.

WITNESSETH:

The undersigned and the Secured Party have entered into the Security Agreement, by which the Debtor has granted a security interest in certain railroad equipment bearing reporting marks and road numbers as listed on Exhibit A attached hereto and in each lease referred to on Exhibit B attached hereto to the Secured Party in order to secure the Debtor's performance of its obligations as described in the Security Agreement.

IN WITNESS WHEREOF, the party hereto has caused this memorandum to be duly executed by its officer duly authorized as of the date and year first above written.

BABCOCK & BROWN RAIL FUNDING LLC

By 
Name: Ross Sullivan
Title: Vice President

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN FRANCISCO)

On the 29th day of April in the year 2004 before me personally came Ross Sullivan to me known, who, being by me duly sworn, did depose and say that he reside(s) at 1090 Butterfield Road, San Anselmo, CA 94960; that he is the Vice President duly appointed) of the Babcock & Brown Rail Funding LLC, the limited liability company described in and which executed the above instrument; and that he signed his name thereto by authority of the officers of said limited liability company.



Martin Phillips
Notary Public

[Notarial Seal]

Memorandum of Mortgage

NEWYORK/133626.1

**Exhibit A
to Memorandum of Mortgage**

EQUIPMENT

Lease #	# Cars	Year Built	Description	Reporting Marks	Casualty Marks
1	451	2004	AAR Code J311, 4520 CF Aluminum Coal Gondola railcars, 286,000 GRL, built by Johnstown America Corporation	PSTX 1001-1451, inclusive	None

**Exhibit B
to Memorandum of Mortgage**

LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS

Lease #

1. Railroad Equipment Lease entered into as of March 23, 2004, by and between The David J. Joseph Company and Consumers Energy Company.

Memorandum of Railroad Equipment Lease entered into March 23, 2004, by and between The David J. Joseph Company and Consumers Energy Company, as amended by Notice of Change in Company Name executed April 15, 2004.

Warranty Bills of Sale dated March 26, 2004, April 7, 2004, April 22, 2004 and April 29, 2004 from Johnstown America Corporation to The David J. Joseph Company.

Bill of Sale dated April 30, 2004 from The David J. Joseph Company to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Purchase Agreement [DJJ] dated as of April 30, 2004, between The David J. Joseph Company and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Assignment and Assumption Agreement, dated as of April 30, 2004, between The David J. Joseph Company and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Notice and Acknowledgment dated April 21, 2004, made by The David J. Joseph Company and Babcock & Brown Rail Funding LLC to Consumers Energy Company, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Notice Pursuant to Notice and Acknowledgment dated April 30, 2004, made by Babcock & Brown Rail Funding LLC and The David J. Joseph Company to Consumers Energy Company, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Warranty Assignment [DJJ] dated as of April 30, 2004, between The David J. Joseph Company, as assignor thereunder, and Babcock & Brown Rail Funding LLC, as assignee thereunder, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Manufacturer's Consent dated April 28, 2004, made by Johnstown America Corporation to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Railcar Service Agreement dated as of April 30, 2004, between The David J. Joseph Company and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.


Together with all substitutions, replacements and renewals of the property above described, and all property which shall hereafter become physically attached to or incorporated in the property above described, whether the Debtor now has rights therein or such rights shall hereafter be acquired by it.

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: _____

4/30/04



Robert W. Alvord